IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIATION NO.1581/06

Shri.Sukesh Raju Shetty .... Applicant

V/s.

The State of Maharashtra .... Respondent

Shri.S.N. Chimade Adv. for the applicant.
Miss. M.M. Deshmukh APP for the State.

CORAM : V.M. KANADE, J.

DATED : 03/05/06

P.C.:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant was arrested in connection with C.R.No.235/1996 registered with Andheri Police Station for the offences punishable U/s.342, 365, 397 r/w 34 of IPC and Sec.3, 25 of Indian Arms Act. The case was committed to the Sessions Court. The applicant was released on bail and also he had been attending the court everyday. Sessions Court however, altered the charge and remanded the matter to the court of Magistrate.

3. Learned Counsel for the applicant submitted that the case papers in respect of said matter were not being traced and therefore, matter did not appear on board. The applicant had been attending one another case in the court of Addl.C.M.M. regularly. He invited my attention to the Roznama which is annexed with the present application. He submitted that in the meantime NBW was issued by the Magistrate in another case in C.R.No.235/05 and thereafter proclamation was issued. He invited my attention to the proclamation which was issued and which is annexed to the application and submitted that address of the applicant which was shown in the proclamation was incorrect. He submitted that subsequently warrant was executed and he was arrested in October, 2005 and he is in jail since then. He submitted that there was no occasion for the applicant to remain absent in the said C.R.No.235/1996c particularly because he had been appearing regularly in another C.R. which was pending before Addl.C.M.M. He further submitted that it is incorrect to say that the applicant was absconding. The proclamation issued was itself incorrect and therefore, proclamation was not served

on the applicant. He, therefore, submitted that the applicant be released on bail.

4 Learned APP appearing on behalf of the State on the other hand submitted that though there is typographical error in the proclamation being issued, proclamation was pasted on the door of the applicant's residence. She further submitted that the report of affixing by the police is not available today. I.O. has not come to the Court. But two other officers who are not connected to the case are present in the court and they are unable to produce said report.

5. After having considered rival submissions, in my view, the applicant is entitled to be released on bail particularly because Roznama which is annexed by the applicant to his application reveals that he had been attending regularly other case which was pending before the Addl.C.M.M. in the same court. If that was the position, there was no reason for him to remain absent in C.R.No.235/1996. Secondly on perusal of proclamation being issued that there is error in mentioning the address of the applicant, the

applicant has annexed the copy of Ration Card which indicates that he has a fixed place in Mumbai.

6. Under these circumstances, the applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount. The applicant shall report to the Andheri Police Station once in a week every Monday till pendency of the trial.

7. The application is accordingly disposed of.

V.M. KANADE J.